

AMENDED IN SENATE AUGUST 18, 2003

AMENDED IN SENATE JUNE 30, 2003

AMENDED IN ASSEMBLY MAY 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1640

Introduced by Assembly Member Laird

February 21, 2003

An act to amend Sections 25404, 25404.1.1, 25404.3, 25501.4, 25532, and 25540 of, and to add Section 25404.1.3 to, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1640, as amended, Laird. Hazardous materials: enforcement.

(1) Existing law requires the Secretary for Environmental Protection to adopt regulations and implement a unified hazardous waste and hazardous materials management regulatory program. Existing law authorizes a city or local agency that meets specified requirements to apply to the secretary to implement the unified program, and requires every county to apply to the secretary to be certified to implement the unified program. Existing law requires a unified program agency to develop and implement a procedure for issuing, to a unified program facility, a unified program facility permit, which encompasses specified permitting requirements. Existing law authorizes a unified program agency, if it determines that a person has committed, or is committing, a violation of any requirement that the UPA is authorized to enforce or implement pursuant to the unified program, to issue an administrative enforcement order requiring that

the violation be corrected and imposing an administrative penalty. Existing law provides that an order issued by the unified program agency setting a penalty pursuant to the hearing by the unified program agency is final upon issuance.

This bill would authorize a unified program agency to suspend or revoke any unified program facility permit or element of a unified program facility permit for not paying the permit fee or a fine or penalty associated with the permit pursuant to a specified procedure.

The bill would authorize a unified program agency to apply to the clerk of the appropriate court for a judgment to collect an administrative penalty ~~from~~ for an administrative order or decision that has become final and would require the court clerk to enter the judgment immediately in conformity with the application.

Since the bill would impose new duties upon unified program agencies with regard to the enforcement of the unified program, the bill would create a state-mandated local program.

(2) Existing law prohibits the secretary from certifying an applicant agency as a unified program agency that proposes to allow a participating agency to implement an element of the unified program unless the secretary makes specified findings, including, if any agency proposed to implement certain elements of the unified program is not directly responsible to the same governing body as the applicant agency, the applicant agency maintains an agreement that ensures that the unified program requirements will be fully implemented.

This bill would instead require the secretary to find, in certifying such an applicant agency, that all other agencies proposing to implement certain elements of the unified program maintain a written agreement with the applicant agency.

(3) Existing law requires businesses that handle hazardous materials to prepare a business plan and submit an annual inventory form to the administering agency. The term “business” is defined as including the federal government, as specified, or any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

This bill would include, as a business for purposes of these requirements, any agency, department, office, board, commission, or bureau of a city, county or district.

(4) Existing law provides for the imposition of civil penalties upon stationary sources with regard to the program to prevent accidental



releases of regulated substances and imposes a criminal penalty upon a stationary source that knowingly violates those requirements.

This bill would define the term “person” for purposes of the provisions regulating accidental releases and would authorize the imposition of civil and criminal liability upon a person who ~~violate~~ *violates* those provisions. Since the bill would create a new crime, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 25404 of the Health and Safety Code, as*
2 *amended by Section 53 of Chapter 999 of the Statutes of 2002, is*
3 *amended to read:*

4 25404. (a) For purposes of this chapter, the following terms
5 shall have the following meanings:

6 (1) (A) “Certified Unified Program Agency” or “CUPA”
7 means the agency certified by the secretary to implement the
8 unified program specified in this chapter within a jurisdiction.

9 (B) “Participating Agency” or “PA” means a state or local
10 agency that has a written agreement with the CUPA pursuant to
11 subdivision (d) of Section 25404.3, and is approved by the
12 secretary, to implement or enforce one or more of the unified
13 program elements specified in subdivision (c), in accordance with
14 Sections 25404.1 and 25404.2.

15 (C) “Unified Program Agency” or “UPA” means the CUPA,
16 or its participating agencies to the extent each PA has been
17 designated by the CUPA, pursuant to a written agreement, to
18 implement or enforce a particular unified program element
19 specified in subdivision (c). The UPAs have the responsibility and
20 authority to implement and enforce the requirements listed in
21 subdivision (c), and the regulations adopted to implement the
22 requirements listed in subdivision (c), to the extent provided by

Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) “Department” means the Department of Toxic Substances Control.

(3) “Minor violation” means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) “Secretary” means the Secretary for Environmental Protection.

(5) “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) “Unified program facility permit” means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) ~~The (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control~~

~~Board pursuant to Section 25297.1, and the requirements of any~~
underground storage tank ordinance adopted by a city or county.

(B) The unified program may not include the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1.

(C) The unified program may not include the corrective action requirements of Sections 25296.10 to 25296.40, inclusive.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to paragraph (1). The secretary shall make all nonconfidential data available on the Internet.

(f) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 25404 of the Health and Safety Code, as added by Section 54 of Chapter 999 of the Statutes of 2002, is amended to read:

1 25404. (a) For purposes of this chapter, the following terms
2 shall have the following meanings:

3 (1) (A) “Certified Unified Program Agency” or “CUPA”
4 means the agency certified by the secretary to implement the
5 unified program specified in this chapter within a jurisdiction.

6 (B) “Participating Agency” or “PA” means a state or local
7 agency that has a written agreement with the CUPA pursuant to
8 subdivision (d) of Section 25404.3, and is approved by the
9 secretary, to implement or enforce one or more of the unified
10 program elements specified in subdivision (c), in accordance with
11 Sections 25404.1 and 25404.2.

12 (C) “Unified Program Agency” or “UPA” means the CUPA,
13 or its participating agencies to the extent each PA has been
14 designated by the CUPA, pursuant to a written agreement, to
15 implement or enforce a particular unified program element
16 specified in subdivision (c). The UPAs have the responsibility and
17 authority to implement and enforce the requirements listed in
18 subdivision (c), and the regulations adopted to implement the
19 requirements listed in subdivision (c), to the extent provided by
20 Chapter 6.5 (commencing with Section 25100), Chapter 6.67
21 (commencing with Section 25270), Chapter 6.7 (commencing
22 with Section 25280), Chapter 6.95 (commencing with Section
23 25500), and Sections 25404.1 and 25404.2. After a CUPA has
24 been certified by the secretary, the unified program agencies and
25 the state agencies carrying out responsibilities under this chapter
26 shall be the only agencies authorized to enforce the requirements
27 listed in subdivision (c) within the jurisdiction of the CUPA.

28 (2) “Department” means the Department of Toxic Substances
29 Control.

30 (3) “Secretary” means the Secretary for Environmental
31 Protection.

32 (4) “Unified program facility” means all contiguous land and
33 structures, other appurtenances, and improvements on the land
34 that are subject to the requirements listed in subdivision (c).

35 (5) “Unified program facility permit” means a permit issued
36 pursuant to this chapter. For the purposes of this chapter, a unified
37 program facility permit encompasses the permitting requirements
38 of Section 25284, and any permit or authorization requirements
39 under any local ordinance or regulation relating to the generation
40 or handling of hazardous waste or hazardous materials, but does

1 not encompass the permitting requirements of a local ordinance
2 that incorporates provisions of the Uniform Fire Code or the
3 Uniform Building Code.

4 (b) The secretary shall adopt implementing regulations and
5 implement a unified hazardous waste and hazardous materials
6 management regulatory program, which shall be known as the
7 unified program, after holding an appropriate number of public
8 hearings throughout the state. The unified program shall be
9 developed in close consultation with the director, the Director of
10 the Office of Emergency Services, the State Fire Marshal, the
11 executive officers and chairpersons of the State Water Resources
12 Control Board and the California regional water quality control
13 boards, the local health officers, local fire services, and other
14 appropriate officers of interested local agencies, and affected
15 businesses and interested members of the public, including
16 environmental organizations.

17 (c) The unified program shall consolidate the administration of
18 the following requirements, and shall, to the maximum extent
19 feasible within statutory constraints, ensure the coordination and
20 consistency of any regulations adopted pursuant to those
21 requirements:

22 (1) (A) Except as provided in subparagraphs (B) and (C), the
23 requirements of Chapter 6.5 (commencing with Section 25100),
24 and the regulations adopted by the department pursuant thereto,
25 applicable to hazardous waste generators, and persons operating
26 pursuant to a permit-by-rule, conditional authorization, or
27 conditional exemption, pursuant to Chapter 6.5 (commencing
28 with Section 25100) or the regulations adopted by the department.

29 (B) The unified program shall not include the requirements of
30 paragraph (3) of subdivision (c) of Section 25200.3, the
31 requirements of Sections 25200.10 and 25200.14, and the
32 authority to issue an order under Sections 25187 and 25187.1, with
33 regard to those portions of a unified program facility that are
34 subject to one of the following:

35 (i) A corrective action order issued by the department pursuant
36 to Section 25187.

37 (ii) An order issued by the department pursuant to Chapter 6.8
38 (commencing with Section 25300) or Chapter 6.85 (commencing
39 with Section 25396).

1 (iii) A remedial action plan approved pursuant to Chapter 6.8
2 (commencing with Section 25300) or Chapter 6.85 (commencing
3 with Section 25396).

4 (iv) A cleanup and abatement order issued by a California
5 regional water quality control board pursuant to Section 13304 of
6 the Water Code, to the extent that the cleanup and abatement order
7 addresses the requirements of the applicable section or sections
8 listed in this subparagraph.

9 (v) Corrective action required under subsection (u) of Section
10 6924 of Title 42 of the United States Code or subsection (h) of
11 Section 6928 of Title 42 of the United States Code.

12 (vi) An environmental assessment pursuant to Section
13 25200.14 or a corrective action pursuant to Section 25200.10 or
14 paragraph (3) of subdivision (c) of Section 25200.3, that is being
15 overseen by the department.

16 (C) The unified program shall not include the requirements of
17 Chapter 6.5 (commencing with Section 25100), and the
18 regulations adopted by the department pursuant thereto,
19 applicable to persons operating transportable treatment units,
20 except that any required notice regarding transportable treatment
21 units shall also be provided to the CUPAs.

22 (2) The requirement of subdivision (c) of Section 25270.5 for
23 owners and operators of aboveground storage tanks to prepare a
24 spill prevention control and countermeasure plan.

25 (3) ~~The (A) Except as provided in subparagraphs (B) and (C),~~
26 ~~the requirements of Chapter 6.7 (commencing with Section~~
27 ~~25280) concerning underground storage tanks, except for the~~
28 ~~responsibilities assigned to the State Water Resources Control~~
29 ~~Board pursuant to Section 25297.1, and the requirements of any~~
30 ~~underground storage tank ordinance adopted by a city or county.~~

31 *(B) The unified program may not include the responsibilities*
32 *assigned to the State Water Resources Control Board pursuant to*
33 *Section 25297.1.*

34 *(C) The unified program may not include the corrective action*
35 *requirements of Sections 25296.10 to 25296.40, inclusive.*

36 (4) The requirements of Article 1 (commencing with Section
37 25501) of Chapter 6.95 concerning hazardous material release
38 response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to paragraph (1). The secretary shall make all nonconfidential data available on the Internet.

(f) This section shall become operative January 1, 2006.

SEC. 3. Section 25404.1.1 of the Health and Safety Code is amended to read:

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), (c), ~~(d)~~, and (e) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.5, the violator shall be liable for a penalty of not more than five thousand dollars (\$5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars (\$10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period.

1 If no notice of defense is filed within the time limits provided by
2 this subdivision, the order shall become final.

3 (e) Except as provided in subparagraph (B) of paragraph (2), a
4 person requesting a hearing on an order issued by the UPA under
5 this section may select the hearing officer specified in either
6 paragraph (1) or (2) in the notice of defense filed with the UPA
7 pursuant to subdivision (d). If a notice of defense is filed but no
8 hearing officer is selected, the UPA may select the hearing officer.
9 Within 90 days of receipt of the notice of defense by the UPA, the
10 hearing shall be scheduled using one of the following:

11 (1) An administrative law judge of the Office of Administrative
12 Hearings of the Department of General Services, who shall
13 conduct the hearing in accordance with Chapter 4.5 (commencing
14 with Section 11400) of Part 1 of Division 3 of Title 2 of the
15 Government Code, and the UPA shall have all the authority
16 granted to an agency by those provisions.

17 (2) (A) A hearing officer designated by the UPA, who shall
18 conduct the hearing in accordance with Chapter 4.5 (commencing
19 with Section 11400) of Part 1 of Division 3 of Title 2 of the
20 Government Code, and the UPA shall have all the authority
21 granted to an agency by those provisions. When a hearing is
22 conducted by a UPA hearing officer pursuant to this paragraph, the
23 UPA shall issue a decision within 60 days after the hearing is
24 conducted. Each hearing officer designated by a UPA shall meet
25 the requirements of Section 11425.30 of the Government Code
26 and any other applicable restriction.

27 (B) A UPA, or a person requesting a hearing on an order issued
28 by a UPA may select the hearing process specified in this
29 paragraph in a notice of defense filed pursuant to subdivision (d)
30 only if the UPA has, as of the date the order is issued pursuant to
31 subdivision (c), selected a designated hearing officer and
32 established a program for conducting a hearing in accordance with
33 this paragraph.

34 (f) The hearing decision issued pursuant to paragraph (2) of
35 subdivision (e) shall be effective and final upon issuance by the
36 UPA. A copy of the decision shall be served by personal service
37 or by certified mail upon the party served with the order, or their
38 representative, if any.

39 (g) Any provision of an order issued under this section, except
40 the imposition of an administrative penalty, shall take effect upon

1 issuance by the UPA if the UPA finds that the violation or
2 violations of law associated with that provision may pose an
3 imminent and substantial endangerment to the public health or
4 safety or the environment. A request for a hearing shall not stay the
5 effect of that provision of the order pending a hearing decision.
6 However, if the UPA determines that any or all provisions of the
7 order are so related that the public health or safety or the
8 environment can be protected only by immediate compliance with
9 the order as a whole, the order as a whole, except the imposition
10 of an administrative penalty, shall take effect upon issuance by the
11 UPA. A request for a hearing shall not stay the effect of the order
12 as a whole pending a hearing decision.

13 (h) A decision issued pursuant to paragraph (2) of subdivision
14 (e) may be reviewed by a court pursuant to Section 11523 of the
15 Government Code. In all proceedings pursuant to this section, the
16 court shall uphold the decision of the UPA if the decision is based
17 upon substantial evidence in the record as a whole. The filing of
18 a petition for writ of mandate shall not stay any action required
19 pursuant to this chapter or the accrual of any penalties assessed
20 pursuant to this chapter. This subdivision does not prohibit the
21 court from granting any appropriate relief within its jurisdiction.

22 (i) All administrative penalties collected from actions brought
23 by a UPA pursuant to this section shall be paid to the UPA that
24 imposed the penalty, and shall be deposited into a special account
25 that shall be expended to fund the activities of the UPA in
26 enforcing this chapter.

27 (j) The UPA shall consult with the district attorney, county
28 counsel, or city attorney on the development of policies to be
29 followed in exercising the authority delegated pursuant to this
30 section as it relates to the authority of the UPA to issue orders.

31 (k) (1) A unified program agency may suspend or revoke any
32 unified program facility permit, or an element of a unified program
33 facility permit, for not paying the permit fee or a fine or penalty
34 associated with the permit in accordance with the procedures
35 specified in this subdivision.

36 (2) If a permittee does not comply with a written notice from
37 the unified program agency to the permittee to make the payments
38 specified in paragraph (1) by the required date provided in the
39 notice, the unified program agency may suspend or revoke the
40 permit or permit element. If the permit or permit element is

1 suspended or revoked, the permittee shall immediately
2 discontinue operating that facility or function of the facility to
3 which the permit element applies until the permit is reinstated or
4 reissued.

5 (3) A permittee may request a hearing to appeal the suspension
6 or revocation of a permit or element of a permit pursuant to this
7 subdivision by requesting a hearing using the procedures provided
8 in subdivision (d).

9 (l) This section does not do any of the following:

10 (1) Otherwise affect the authority of a UPA to take any other
11 action authorized by any other provision of law, except the UPA
12 shall not require a person to pay a penalty pursuant to this section
13 and pursuant to a local ordinance for the same violation.

14 (2) Restrict the power of a city attorney, district attorney,
15 county counsel, or the Attorney General to bring, in the name of
16 the people of California, any criminal proceeding otherwise
17 authorized by law.

18 (3) Prevent the UPA from cooperating with, or participating in,
19 a proceeding specified in paragraph (2).

20 ~~SEC. 2.—~~

21 *SEC. 4.* Section 25404.1.3 is added to the Health and Safety
22 Code, to read:

23 25404.1.3. (a) A unified program agency may apply to the
24 clerk of the appropriate court for a judgment to collect an
25 administrative penalty for an administrative order or decision that
26 has become final pursuant to subdivision (d) or (f) of Section
27 25404.1.1 and imposes a penalty pursuant to Section 25401.1.1,
28 if a petition for judicial review of the final order or decision has not
29 been filed within the time limits prescribed in Section 11523 of the
30 Government Code.

31 (b) The UPA's application to the court clerk shall include a
32 certified copy of the final administrative order or decision that
33 copy of the order or decision constitutes a sufficient showing to
34 warrant issuance of the judgment. The court clerk shall enter the
35 judgment immediately in conformity with the application. The
36 judgment has the same force and effect as, and is subject to all the
37 provisions of law relating to, a judgment in a civil action, and may
38 be enforced in the same manner as any other judgment of the court
39 in which it is entered.

40 ~~SEC. 3.—~~

1 SEC. 5. Section 25404.3 of the Health and Safety Code is
2 amended to read:

3 25404.3. (a) The secretary shall, within a reasonable time
4 after submission of a complete application for certification
5 pursuant to Section 25404.2, and regulations adopted pursuant to
6 that section, but not to exceed 180 days, review the application,
7 and, after holding a public hearing, determine if the application
8 should be approved. Before disapproving an application for
9 certification, the secretary shall submit to the applicant agency a
10 notification of the secretary's intent to disapprove the application,
11 in which the secretary shall specify the reasons why the applicant
12 agency does not have the capability or the resources to fully
13 implement and enforce the unified program in a manner that is
14 consistent with the regulations implementing the unified program
15 adopted by the secretary pursuant to this chapter. The secretary
16 shall provide the applicant agency with a reasonable time to
17 respond to the reasons specified in the notification and to correct
18 deficiencies in its application. The applicant agency may request
19 a second public hearing, at which the secretary shall hear the
20 applicant agency's response to the reasons specified in the
21 notification.

22 (b) In determining whether an applicant agency should be
23 certified, or designated as certified, the secretary, after receiving
24 comments from the director, the Director of the Office of
25 Emergency Services, the State Fire Marshal, and the Executive
26 Officers and Chairpersons of the State Water Resources Control
27 Board and the California regional water quality control boards,
28 shall consider at least all of the following factors:

29 (1) Adequacy of the technical expertise possessed by each
30 unified program agency that will be implementing each element
31 of the unified program, including, but not limited to, whether the
32 agency responsible for implementing and enforcing the
33 requirements of Chapter 6.5 (commencing with Section 25100)
34 satisfies the requirements of Section 15260 of Title 27 of the
35 California Code of Regulations.

36 (2) Adequacy of staff resources.

37 (3) Adequacy of budget resources and funding mechanisms.

38 (4) Training requirements.

1 (5) Past performance in implementing and enforcing
2 requirements related to the handling of hazardous materials and
3 hazardous waste.

4 (6) Recordkeeping and cost accounting systems.

5 (7) Compliance with the criteria in Section 15170 of Title 27
6 of the California Code of Regulations.

7 (c) (1) In making the determination of whether or not to certify
8 a particular applicant agency as a certified unified program
9 agency, the secretary shall consider the applications of every other
10 applicant agency applying to be a certified unified program agency
11 within the same county, in order to determine the impact of each
12 certification decision on the county. If the secretary identifies that
13 there may be adverse impacts on the county if any particular
14 agency in a county is certified, the secretary shall work
15 cooperatively with each affected agency to address the secretary's
16 concerns.

17 (2) The secretary shall not certify an agency to be a certified
18 unified program agency unless the secretary finds both of the
19 following:

20 (A) The unified program will be implemented in a coordinated
21 and consistent manner throughout the entire county in which the
22 applicant agency is located.

23 (B) The administration of the unified program throughout the
24 entire county in which the applicant agency is located will be less
25 fragmented between jurisdictions, as compared to before January
26 1, 1994, with regard to the administration of the provisions
27 specified in subdivision (c) of Section 25404.

28 (d) (1) The secretary shall not certify an applicant agency that
29 proposes to allow participating agencies to implement certain
30 elements of the unified program unless the secretary makes all of
31 the following findings:

32 (A) The applicant agency has adequate authority, and has in
33 place adequate systems, protocols, and agreements, to ensure that
34 the actions of the other agencies proposed to implement certain
35 elements of the unified program are fully coordinated and
36 consistent with each other and with those of the applicant agency,
37 and to ensure full compliance with the regulations implementing
38 the unified program adopted by the secretary pursuant to this
39 chapter.

(B) An agreement between the applicant and other agencies proposed to implement any elements of the unified program contains procedures for removing any agencies proposed and engaged to implement any element of the unified program. The procedures in the agreement shall include, at a minimum, provisions for providing notice, stating causes, taking public comment, making appeals, and resolving disputes.

(C) The other agencies proposed to implement certain elements of the unified program have the capability and resources to implement those elements, taking into account the factors designated in subdivision (b).

(D) All other agencies proposed to implement certain elements of the unified shall maintain an agreement with the applicant agency that ensures that the requirements of Section 25404.2 will be fully implemented.

(E) If the applicant agency proposes that any agency other than itself will be responsible for implementing aspects of the single fee system imposed pursuant to Section 25404.5, the applicant agency maintains an agreement with that agency that ensures that the fee system is implemented in a fully consistent and coordinated manner, and that ensures that each participating agency receives the amount that it determines to constitute its necessary and reasonable costs of implementing the element or elements of the unified program that it is responsible for implementing.

(2) After the secretary has certified an applicant agency pursuant to this subdivision, that agency shall obtain the approval of the secretary before removing and replacing a participating agency that is implementing an element of the unified program.

(3) Any state agency, including, but not limited to, the State Department of Health Services, acting as a participating agency, may contract with a unified program agency to implement or enforce the unified program.

(e) Until a city's or county's application for certification to implement the unified program is acted upon by the secretary, the roles, responsibilities, and authority for implementing the programs identified in subdivision (c) of Section 25404 that existed in that city or county pursuant to statutory authorization as of December 31, 1993, shall remain in effect.

(f) (1) Except as provided in subparagraph (C) of paragraph (2) or in Section 25404.8, if no local agency has been certified by

January 1, 1997, to implement the unified program within a city, the secretary shall designate either the county in which the city is located or another agency pursuant to subparagraph (A) of paragraph (2) as the unified program agency.

(2) (A) Except as provided in subparagraph (C), if no local agency has been certified by January 1, 2001, to implement the unified program within the unincorporated or an incorporated area of a county, the secretary shall determine how the unified program shall be implemented in the unincorporated area of the county, and in any city in which there is no agency certified to implement the unified program. In such an instance, the secretary shall work in consultation with the county and cities to determine which state or local agency or combination of state and local agencies should implement the unified program, and shall determine which state or local agency shall be designated as the certified unified program agency.

(B) The secretary shall determine the method by which the unified program shall be implemented throughout the county and may select any combination of the following implementation methods:

(i) The certification of a state or local agency as a certified unified program agency.

(ii) The certification of an agency from another county as the certified unified program agency.

(iii) The certification of a joint powers agency as the certified unified program agency.

(C) Notwithstanding paragraph (1) and subparagraphs (A) and (B), if the Cities of Sunnyvale, Anaheim, and Santa Ana prevail in litigation filed in 1997 against the secretary, and, to the extent the secretary determines that these three cities meet the requirements for certification, the secretary may certify these cities as certified unified program agencies.

(g) (1) If a certified unified program agency wishes to withdraw from its obligations to implement the unified program and is a city or a joint powers agency implementing the unified program within a city, the agency may withdraw after providing 180 days' notice to the secretary and to the county within which the city is located, or to the joint powers agency with which the county has an agreement to implement the unified program.

(2) Whenever a certified unified program agency withdraws from its obligations to implement the unified program, or the secretary withdraws an agency's certification pursuant to Section 25404.4, the successor certified unified program agency shall be determined in accordance with subdivision (f).

~~SEC. 4.—~~

SEC. 6. Section 25501.4 of the Health and Safety Code is amended to read:

25501.4. Notwithstanding subdivision (d) of Section 25501, "business" also includes all of the following:

(a) The federal government, to the extent authorized by federal law.

(b) Any agency, department, office, board, commission, or bureau of state government, including, but not limited to, the campuses of the California Community Colleges, the California State University, and the University of California.

(c) Any agency, department, office, board, commission, or bureau of a city, county or district.

~~SEC. 5.—~~

SEC. 7. Section 25532 of the Health and Safety Code is amended to read:

25532. Unless the context indicates otherwise, the following definitions govern the construction of this article:

(a) "Accidental release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(b) "Administering agency" means the local agency authorized, pursuant to Section 25502, to implement and enforce this article.

(c) "Covered process" means a process that has a regulated substance present in more than a threshold quantity.

(d) "Modified stationary source" means an addition or change to a stationary source that qualifies as a "major change," as defined in Subpart A (commencing with Section 68.1) of Part 68 of Subchapter C of Chapter I of Title 40 of the Code of Federal Regulations. "Modified stationary source" does not include an increase in production up to the source's existing operational capacity or an increase in production level, up to the production levels authorized in a permit granted pursuant to Section 42300.

(e) “Process” means any activity involving a regulated substance, including any use, storage, manufacturing, handling, or onsite movement of the regulated substance or any combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located so that a regulated substance could be involved in a potential release, shall be considered a single process.

(f) “Qualified person” means a person who is qualified to attest, at a minimum, to the completeness of an RMP.

(g) “Regulated substance” means any substance that is either of the following:

(1) A regulated substance listed in Section 68.130 of Title 40 of the Code of Federal Regulations pursuant to paragraph (3) of subsection (r) of Section 112 of the Clean Air Act (42 U.S.C. Sec. 7412(r)(3)).

(2) (A) An extremely hazardous substance listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations that is any of the following:

(i) A gas at standard temperature and pressure.

(ii) A liquid with a vapor pressure at standard temperature and pressure equal to or greater than 10 millimeters mercury.

(iii) A solid that is one of the following:

(I) In solution or in molten form.

(II) In powder form with a particle size less than 100 microns.

(III) Reactive with a National Fire Protection Association rating of 2, 3, or 4.

(iv) A substance that the office determines may pose a regulated substances accident risk pursuant to subclause (II) of clause (i) of subparagraph (B) or pursuant to Section 25543.3.

(B) (i) On or before June 30, 1997, the office shall, in consultation with the Office of Environmental Health Hazard Assessment, determine which of the extremely hazardous substances listed in Appendix A of Part 355 (commencing with Section 355.10) of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations do either of the following:

(I) Meet one or more of the criteria specified in clauses (i), (ii), or (iii) of subparagraph (A).

(II) May pose a regulated substances accident risk, in consideration of the factors specified in subdivision (g) of Section

1 25543.1, and, therefore, should remain on the list of regulated
2 substances until completion of the review conducted pursuant to
3 subdivision (a) of Section 25543.3.

4 (ii) The office shall adopt, by regulation, a list of the extremely
5 hazardous substances identified pursuant to clause (i). Extremely
6 hazardous substances placed on the list are regulated substances
7 for the purposes of this article. Until the list is adopted, the
8 administering agency shall determine which extremely hazardous
9 substances should remain on the list of regulated substances
10 pursuant to the standards specified in clause (i).

11 (h) “Regulated substances accident risk” means a potential for
12 the accidental release of a regulated substance into the
13 environment that could produce a significant likelihood that
14 persons exposed may suffer acute health effects resulting in
15 significant injury or death.

16 (i) “RMP” means the risk management plan required under
17 Part 68 (commencing with Section 68.1) of Subchapter C of
18 Chapter I of Title 40 of the Code of Federal Regulations and by this
19 article.

20 (j) “State threshold quantity” means the quantity of a regulated
21 substance described in subparagraph (A) of paragraph (2) of
22 subdivision (g), as adopted by the office pursuant to Section
23 25543.1 or 25543.3. Until the office adopts a state threshold
24 quantity for a regulated substance, the state threshold quantity
25 shall be the threshold planning quantity for the regulated substance
26 specified in Appendix A of Part 355 (commencing with Section
27 355.10) of Subchapter J of Chapter I of Title 40 of the Code of
28 Federal Regulations.

29 (k) “Stationary source” means any stationary source, as
30 defined in Section 68.3 of Title 40 of the Code of Federal
31 Regulations.

32 (l) “Threshold quantity” means the quantity of a regulated
33 substance that is determined to be present at a stationary source in
34 the manner specified in Section 68.115 of Title 40 of the Code of
35 Federal Regulations and that is the lesser of either of the following:

36 (1) The threshold quantity for the regulated substance specified
37 in Section 68.130 of Title 40 of the Code of Federal Regulations.

38 (2) The state threshold quantity.

39 (m) “Person” means an individual, trust, firm, joint stock
40 company, business concern, partnership, limited liability

company, association, or corporation, including, but not limited to, a government corporation. “Person” also includes any city, county, city and county, district, commission, the state or any department, agency or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.

~~SEC. 6.—~~

SEC. 8. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any person or stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials. When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

(b) Any person or stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year. If the violation results in, or significantly contributes to, an emergency, including a fire, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of any hazardous materials.

~~SEC. 7.—~~

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution or because a local agency or school district has the
3 authority to levy service charges, fees, or assessments sufficient to
4 pay for the program or level of service mandated by this act, within
5 the meaning of Section 17556 of the Government Code.

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